

EXHIBIT AA

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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

DEC 05 2013

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

15 **THE PEOPLE OF THE STATE OF**
16 **CALIFORNIA, et al.,**

17 Plaintiffs,

18 v.

19 **SAMSUNG SDI, CO., LTD., et al.,**

20 Defendants.

Case No. CGC-11-515784

**CORRECTED DECLARATION OF
WILLIAM S. COMANOR IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO
BMCC's MOTION TO QUASH SERVICE
OF SUMMONS**

Date: December 17, 2013

Time: 9 a.m.

Dept: 304

Judge: Hon. Curtis E.A. Karnow

Trial Date:

Action Filed: November 8, 2011

23 **REDACTED VERSION**

27 SF2011203501

1 I, William S. Comanor, declare and state as follows:

2
3 **Qualifications**

4 I am an economist and Professor of Economics at the University of California, Santa
5 Barbara (UCSB). I am also Professor of Health Policy and Management in the School of Public
6 Health at the University of California, Los Angeles (UCLA). At UCSB, I have regularly taught a
7 course in Antitrust Economics.
8

9 I joined the University of California faculty in 1975. From 1978 to 1980, on leave from
10 my faculty position, I was Director of the Bureau of Economics at the Federal Trade Commission
11 in Washington, D.C. In that capacity, I supervised a staff of over 200 government employees,
12 including more than 85 economists. This staff was responsible for providing economic support
13 for all Commission activities as well as for carrying out economic research activities that dealt
14 with competition and consumer protection issues.
15

16 Prior to 1975, I was Assistant and Associate Professor of Economics at Harvard and
17 Stanford Universities. I also served as Professor of Economics for a year in Canada at the
18 University of Western Ontario, and was Fulbright Lecturer in Economics at the University of
19 Tokyo. In 1964, I received my Ph.D. in economics from Harvard University; and in 1965 and
20 1966 served as Special Economic Assistant to the Assistant Attorney General in charge of the
21 Antitrust Division of the United States Department of Justice.
22

23 In April 2003, I received the Distinguished Fellow Award from the Industrial
24 Organization Society. That award is given annually in recognition of excellence in Research,
25 Education and Professional Leadership in the field of Industrial Organization. My work on
26 Antitrust Economics lies within that field of study.
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1 During my professional career, I have studied, lectured, written, and consulted on many
 2 issues dealing with the antitrust economics. A more detailed statement of my professional and
 3 educational background, including a list of publications, is attached as Appendix A. A listing of
 4 other cases in which I testified as an expert at trial or by deposition within the past four years is
 5 also attached as Appendix B. My compensation for both analysis and testimony in this matter is
 6 paid at the rate of \$700 per hour.

8 I was also retained by the attorneys for the Indirect Purchaser Plaintiffs in the Flat Panel
 9 Antitrust Litigation and provided antitrust analyses and damage estimates in that case. I
 10 submitted reports on the LCD industry, the cartel, overcharges, pass-through rates and damages in
 11 that matter, and also sat for two depositions. I am also currently conducting an antitrust analysis,
 12 preparing estimates of damages, and writing a report in *State of California, et al., v. Samsung SDI*
 13 *Company, Ltd., et al.*

14 Assignment

15 I have been asked by attorneys in the Office of the Attorney General of California to
 16 provide economic data and analysis demonstrating there is a strong probability that some CRT
 17 tubes produced by Beijing Matsushita Color CRT Company, Ltd. (BMCC) were incorporated into
 18 finished products that were sold in California. More generally, I have been asked to investigate
 19 whether there are economic activities linking BMCC to California during the relevant period:
 20 1995 to 2007.

21 Background of BMCC

22 Beijing-Matsushita Color CRT Company is a Chinese company located in Beijing,
 23 People's Republic of China. It is a joint venture, 50 percent owned by MTPD¹ and 50 percent

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 27 ¹ BMCC was founded as a joint venture between several Chinese investors and the predecessor to
 28 Panasonic, Matsushita Electric Industrial Company. When Matsushita and Toshiba formed the MTPD joint venture it
 assumed Matsushita's 50 percent ownership in BMCC.

1 owned by Beijing Orient Electronics, China National Electronics Import & Export Company, and
 2 Beijing Yayunchun Branch of the Industrial and Commercial Bank of China.² The company
 3 began making CRTs prior to the advent of the CRT price fixing cartels. It produced CRT monitor
 4 tubes through 1999, when it ceased making those tubes, but continued to make CRT television
 5 tubes until it ceased CRT operations in 2009.³

7 A MTPD employee, Mr. Ayumu Kinoshita, assigned to BMCC submitted a declaration in
 8 which he describes BMCC's CRT tube manufacturing and sales.⁴ Specifically, he testified that
 9 while the majority of the CRTs manufactured by BMCC during the cartel period were sold and
 10 shipped to customers located in China, he also stated that, "certain Panasonic entities purchased a
 11 limited amount of CPTs (i.e., CRT television tubes) from BMCC FOB China, which CPTs the
 12 Panasonic entities sold in the United States."⁵

14 Economic Issues

15 In its *Memorandum in Support of Motion to Quash Service of Summons*, BMCC asserts
 16 that it did not sell CPTs (i.e., CRT tubes used in televisions) into the United States or "control...
 17 the prices at which they were sold there."⁶ The first part of this assertion is false. As I discuss in
 18 the next section, sales data provided by MTPD show that BMCC did in fact sell CRTs into the
 19 United States. Since CRT tubes of a given size and regional configuration are interchangeable,⁷ it
 20 is also likely that BMCC's CRT tubes sold into the United States could also have been sold in
 21 California as well as in other states.

23 ² *The State of California et al. v. Samsung SDI, et al.*, Complaint, p. 11.

24 ³ *State of California v. Samsung SDI, et al.*, Beijing Matsushita Color CRT Co., Ltd's Memorandum in
 25 Support of Motion to Quash Service of Summons, p. 1.

26 ⁴ *State of California v. Samsung SDI, et al.*, Declaration of Ayumu Kinoshita in Support of Beijing
 Matsushita Color CRT Co., Ltd's Motion to Quash Service of Summons.

27 ⁵ *Ibid.*, p. 4.

28 ⁶ Beijing Matsushita Color CRT Co., Ltd's Memorandum in Support of Motion to Quash Service of
 Summons, p. 6.

⁷ See Deposition of Chin Chun Liu (an executive of Chunghwa Picture Tubes Limited, Volume II, pp. 299-
 300.

Furthermore, the second part of BMCC's assertion, indicating it did not control the prices at which CRTs were sold in the United States, is questionable. According to notes from various cartel meetings, BMCC representatives participated in the CRT price fixing cartel.⁸ Representatives from its joint venture parent, Matsushita-Toshiba Picture Display (MTPD), attended numerous meetings during the cartel period. This cartel succeeded in elevating CRT prices. Through its involvement in an effective cartel, BMCC increased the prices of its CRT tubes above levels that would have been charged absent the cartel. As a matter of economics, higher tube prices resulting from the cartel would then be passed on through various stages in the distribution system (e.g., from BMCC to television assembler to wholesaler to retailer and then to natural person end users). Higher tube prices would then lead directly to higher prices for TVs containing BMCC CRT TV tubes.

Empirical Evidence of BMCC's Sales of CRTs into the United States and California

On April 22, 2011, as part of the discovery process in the *Cathode Ray Tube (CRT) Antitrust Litigation*, Panasonic produced a database that included information on global sales of CRTs produced by Panasonic affiliated companies from 1994 to 2007.⁹ This database includes monthly summaries of transactions between MTPD factories and customers, by type of CRT, tube size, quantity, along with the value in dollars of tubes sold to a given customer in a given month. It contains information on the factory where the CRT tubes were manufactured, and BMCC is listed as one such factory. Additional information includes the country in which the manufacturing facility was located and the country in which a tube's purchaser was located. The United States and Mexico are options in this database field. The data contained in this database

⁸ For evidence of BMCC's attendance and participation at cartel meetings, see CHU00030684, CHU00030745, CHU00030819, and SDCRT-0086672.

⁹ See letter from Adam C. Hemlock of Weil, Gotshal & Manges, LLP to Paul H. McVoy at Milberg, LLP. Paragraph 1. The database is MTPD-0122906.xls

1 can then be used to estimate the flow of CRTs from factory location to the tube purchaser's
2 country.

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13 My work is ongoing and I have not yet identified the number of CRT TVs purchased by
14 natural persons in California. However, one can estimate the number of BMCC's CRT tubes that
15 were incorporated into TVs and then sold in California. CRT TVs are considered normal goods,
16 which means that natural persons with higher incomes would tend to purchase more CRT TVs
17 than otherwise identical persons with lower incomes. As a result, states with higher income
18 consumers would be expected to account for relatively more purchases of CRT TVs. Therefore, a
19 conservative estimate of the proportion of BMCC's tubes embodied in CRT TVs sets that were
20 sold in the United States and purchased by natural persons in California can be made on the basis
21 of California's gross state product relative to United States gross domestic product.¹¹ Using gross
22 state product and gross domestic product data as published by the U. S. Department of
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27 Gross state product is the value of all goods and services produced in a particular state in a particular
28 year, whereas gross domestic product is the value of all goods and services produced in the United States during a particular year.

1 Commerce,¹² I find that California accounted for approximately 13.2 percent of total income in
 2 the United States between 1995 and 2007. On that basis, I estimate that approximately 160,275
 3 CRTs manufactured by BMCC, worth approximately \$10.7 million, were sold to natural persons
 4 in California from 1995 to 2007 in CRT containing products.

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 6 I have also analyzed BMCC's sales of CRTs to purchasers located in Mexico. During the
 7 relevant period, it sold approximately 2.6 million tubes, or 3.1 percent of its aggregate unit sales,
 8 to purchasers located there. The value of these tube sales was approximately \$99.4 million.
 9 Apparently, BMCC sold more tubes to purchasers located in Mexico than in the United States.
 10 However, these sales are relevant to the question at hand because many TV assembly plants that
 11 supplied the United States and California with finished products containing CRTs were situated in
 12 northern Mexico in locations immediately south of the US-Mexico border.
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 17 Martin Kenney, a researcher at the University of California, Davis describes this shift: "television
 18 assembly in North America shifted to Mexico while imports from Asia continue to decline ... In
 19 1997, North American television demand was for 27.2 million units; of these 21.4 million were
 20 produced in Mexico."¹⁴ As further noted by Kenney, 20 percent of the world's television sets
 21 were assembled in Mexico in 1997.¹⁵
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24 ¹² The underlying data are available at <http://www.bea.gov/regional/downloadzip.cfm>.

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 27 ¹⁴ Martin Kenney, The Shifting Value Chain: The Television Industry in North America," in Martin Kenney
 and Richard Florida, eds., *Locating Global Advantage: Industry Dynamics in the International Economy* (Stanford:
 Stanford University Press), 2004, pp. 95-96.

28 ¹⁵ *Ibid.*, p. 107.

1 The extent to which these factories supplied televisions to the United States can be
 2 estimated from Banco Nacional de Comercio Exterior ("Bancomext"—a Mexican state-owned
 3 bank and export credit agency) data showing the sources of manufacture and consumption of
 4 televisions within NAFTA in 1998. According to the Bank's data, Mexico produced 26.4 million
 5 television sets in 1998, or approximately 98.5 percent of all televisions produced within NAFTA.
 6 Mexican consumers, however, purchased only 1.6 million sets that year. Since each TV requires
 7 a television tube,¹⁶ nearly 95 percent of all TV sets produced in Mexico were exported. Moreover,
 8 the United States was the largest consumer of Mexico-assembled televisions. One estimate is that
 9 sales in the United States accounted for 90 percent of Mexico's television production in 2000.¹⁷
 10 In that case, 90 percent of the 2.6 million CRTs that BMCC sold to purchasers located in Mexico,
 11 or 2.3 million tubes, were assembled into TV sets that were then sold in the United States. The
 12 value of BMCC's CRT tubes that flowed through Mexico to the United States could then be
 13 valued at approximately \$89.5 million. Some of these finished televisions were surely sold in
 14 California. Using the estimates of California's share of CRT TV consumption in the United States
 15 of 13.2 percent, an additional 308,900 CRT tubes worth \$11.81 million, were likely sold to
 16 natural persons in California during the cartel period.

17 Conclusions

18 BMCC left a large economic footprint in the market for CRT TVs sold in California.

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 24 These tubes were assembled into finished CRT televisions. Those

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 27 ¹⁶ According to Fuji Chimera Research Institute, *Flat Panel Displays and Their Applications: Forecasts and Trends*, CRT TVs accounted for over 99 percent of all televisions sold worldwide in 1998.

28 ¹⁷ Jorge Carrillo, "Foreign Direct Investment and Local Linkages: The Case of the Mexican Television Industry in Tijuana," *Research in the Sociology of Work*, vol. 13 (2003), p. 107.

1 finished goods were then sold to retailers who in turn sold many of them to natural persons in
2 California. [REDACTED]
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8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed on this 2nd day of December 2013 in Los Angeles,
10 California.
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14 William S. Comanor
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APPENDIX A

Curriculum Vitae

NAME William S. Comanor

ADDRESS Department of Economics
University of California
Santa Barbara, CA 93106
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DATE OF BIRTH May 11, 1937

BIRTHPLACE Philadelphia, Pennsylvania

EDUCATION 1951-1955 Central High School, Philadelphia, PA
1955-1957 Williams College, Williamstown, MA
1957-1959 Haverford College, Haverford, PA
A.B. in Economics
1959-1963 Harvard University, Cambridge, MA
Ph.D. in Economics
1963-1964 London School of Economics,
London, England

THESIS TITLE The Economics of Research and Development in
the Pharmaceutical Industry

FIELDS OF INTEREST Applied Microeconomics
Industrial Organization and Public Policy

PROFESSIONAL
OFFICES Vice President, Industrial Organization
Society, 1990
President, Industrial Organization Society,
1991

AWARD Distinguished Fellow Award, Industrial
Organization Society, 2003

BOARD OF EDITORS Review of Industrial Organization
Antitrust Bulletin
Journal of Industrial Economics
International Journal of Advertising

Professional Experience

Teaching Fellow, Harvard University, 1961-1963.

Instructor in Economics, Harvard University, 1964-1965.

Special Economic Assistant to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 1965-1966.

Assistant Professor of Economics, Harvard University, 1966-1968.

Associate Professor of Economics, Graduate School of Business, Stanford University, 1968-1973.

Fulbright Visiting Lecturer, University of Tokyo, 1972.

Visiting Associate Professor of Economics, Harvard University, 1973-1974.

Professor of Economics, University of Western Ontario, 1974-1975.

Director, Bureau of Economics, Federal Trade Commission, 1978-1980.

Professor of Economics, University of California, Santa Barbara, 1975-

Chairman, Department of Economics, University of California, Santa Barbara, 1984-1987.

Visiting Professor of Law, University of California, Los Angeles, 1988-90.

Visiting Professor of Public Health, University of California, Los Angeles, 1990-93

Professor, Department of Health Policy and Management, Fielding School of Public Health, University of California, Los Angeles, 1993-

Books and Monographs

Advertising and Market Power, Harvard University Press, 1974 (with Thomas A. Wilson).

National Health Insurance in Ontario: The Effects of a Policy of Cost Control, American Enterprise Institute, 1980.

Competition Policy in Europe and North America: Economic Issues and Institutions, Harwood Academic Publishers, 1990.

Competition Policy in the Global Economy, Routledge Press, 1997 (with Leonard Waverman and Akira Goto).

The Law and Economics of Child Support Payments, Edward Elgar Publishers, 2004.

Pharmaceutical Economics, Edward Elgar Publishers, forthcoming (with Stuart O. Schweitzer).

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"Research and Competitive Product Differentiation in the Pharmaceutical Industry in the United States," Economica, November 1964.

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"Advertising and the Advantage of Size," American Economic Review, May 1969 (with Thomas A. Wilson).

"Patent Statistics as a Measure of Technical Change," Journal of Political Economy, May-June 1969 (with F.M. Scherer).

"Allocative Efficiency, X-Efficiency, and the Measurement of Welfare Losses," Economica, August 1969 (with Harvey Leibenstein).

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"Quantitative Studies in Industrial Organization: A Comment," M.D. Intriligator, ed., Frontiers of Quantitative Economics, North Holland, 1971.

"On Advertising and Profitability," Review of Economics and Statistics, November 1971 (with Thomas A. Wilson).

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APPENDIX B

CASES AT WHICH TESTIMONY WAS PROVIDED SINCE JANUARY 1, 2009

William S. Comanor

Wyeth v. Apotex, Inc., and Apotex Corp., U.S. District Court for the Southern District of Florida; testimony at trial and by deposition.

McDonough, et al. v. Toys R Us Inc. d/b/a Babies R Us, et al., U.S. District Court for the Eastern District of Pennsylvania; testimony at hearing and by deposition.

Commonwealth of Pennsylvania v. TAP Pharmaceutical Products, Inc., et al., Commonwealth Court of Pennsylvania, testimony at trial.

In re TFT-LCD (Flat Panel) Antitrust Litigation, U.S. District Court for the Northern District of California, testimony by deposition.

Rx.com and Joe S. Rosson v. John M. O'Quinn & Associates et al., District Court of Harris County, Texas, testimony at trial.